

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

)))))))))))))))))))))))))))))))))))))))))) ,

**In the Matter of**  
**GREY ADVERTISING, INC.,**  
**a corporation.**

\* **FILE NO. 952-3231**  
\*  
\* **AGREEMENT CONTAINING**  
\* **CONSENT ORDER TO CEASE**  
\* **AND DESIST**  
\*

)))))))))))))))))))))))))))))))))))))))))) -

The Federal Trade Commission having initiated an investigation of certain acts and practices of Grey Advertising, Inc., a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

**IT IS HEREBY AGREED** by and between Grey Advertising, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Grey Advertising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office or place of business at 777 Third Avenue, New York, New York 10017.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.
3. Proposed respondent waives:
  - (a) Any further procedural steps;
  - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
  - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or

issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## **ORDER**

### **I.**

**IT IS ORDERED** that respondent Grey Advertising, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any frozen yogurt, frozen sorbet or ice cream product (excluding all other food or confection products in which ice cream is an ingredient comprising less than fifty percent of the total weight of the involved product) in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol, or calories in any such product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

### **II.**

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any frozen yogurt, frozen sorbet or ice cream by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

### **III.**

**IT IS FURTHER ORDERED** that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising under this Order.

### **IV.**

**IT IS FURTHER ORDERED** that respondent shall, within thirty (30) days after service of this Order, distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements or other materials covered by this Order.

**V.**

**IT IS FURTHER ORDERED** that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon in disseminating such representation; and
2. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

**VI.**

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this Order that terminates in less than twenty years;
- B. This Order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

**VII.**

**IT IS FURTHER ORDERED** that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

GREY ADVERTISING, INC.,  
a corporation

By: \_\_\_\_\_

\_\_\_\_\_  
LEONARD ORKIN  
Kay Collyer & Boose  
Attorney for Proposed Respondent

\_\_\_\_\_  
ROSEMARY ROSSO  
Counsel for the Federal Trade  
Commission

\_\_\_\_\_  
MICHAEL OSTHEIMER  
Counsel for the Federal Trade  
Commission

APPROVED:

---

C. LEE PEELER  
Associate Director  
Division of Advertising Practices

---

JOAN Z. BERNSTEIN  
Director  
Bureau of Consumer Protection

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

))))))))))))))))))))))))))))))))))))))))))))))))))))))))),

\*  
\*  
\*     **DOCKET NO.**  
\*  
\*  
\*

**In the Matter of**  
**GREY ADVERTISING, INC.,**  
**a corporation.**

)))))))))))))))))))))))))))))))))))))))))))))))))))))))) -

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Grey Advertising, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

**PARAGRAPH ONE:** Respondent Grey Advertising, Inc. is a New York corporation, with its principal office or place of business at 777 Third Avenue, New York, New York 10017.

**PARAGRAPH TWO:** Respondent, at all times relevant to this complaint, was an advertising agency of The Dannon Company, Inc., and prepared and disseminated advertisements to promote the sale of Dannon Pure Indulgence frozen yogurt, a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

**PARAGRAPH THREE:** The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

**PARAGRAPH FOUR:** Respondent has disseminated or has caused to be disseminated advertisements for Dannon Pure Indulgence frozen yogurt ("DPI"), including but not necessarily limited to the attached Exhibit A. This advertisement contains the following statements and depictions:

VIDEO

Super: **BEWARE: THE FOLLOWING GRAPHIC IMAGES MAY PROMPT FEELINGS OF GUILT AMONG VIEWERS.**

AUDIO

Announcer: The following graphic images may prompt feelings of guilt among viewers.

Close-ups of frozen dessert.

Super: **HEY**

Super: **IT'S OK**

Man with frozen dessert container.

Scoops of frozen dessert falling into dish.

Super: **It's FROZEN YOGURT**

Close-up of container of DPI.

Woman eating DPI. Super: **It's Pure Heaven**

Scoops of DPI variously identified in supers as caramel pecan, heath bar crunch, and cookies n cream.

Containers of DPI. Super: **New Dannon Pure Indulgence Frozen Yogurt**

Announcer: New Dannon Pure Indulgence Frozen Yogurt.

Scoops of DPI. Super: **PROCEED WITHOUT CAUTION**

Announcer: Very well... Proceed without caution.

(Exhibit A, television advertisement).

**PARAGRAPH FIVE:** Through the use of the statements and depictions contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that Dannon Pure Indulgence frozen yogurt is low in fat, low in calories, and lower in fat than ice cream.

**PARAGRAPH SIX:** In truth and in fact, at the time the advertisements were disseminated, certain flavors of Dannon Pure Indulgence frozen yogurt were not low in fat, not low in calories, and not lower in fat than many ice creams. Therefore, the representations set forth in PARAGRAPH FIVE were false and misleading.

**PARAGRAPH SEVEN:** Respondent knew or should have known that the representations set forth in PARAGRAPH FIVE were false and misleading.

**PARAGRAPH EIGHT:** The acts and practices of the respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Therefore, the Federal Trade Commission this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, has issued this complaint against respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

[Exhibit A attached to paper copies, but not available in electronic format]

## **ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Grey Advertising, Inc. ("Grey") concerning advertising claims made by Grey for Dannon Pure Indulgence frozen yogurts. In a related matter, the Commission has also accepted, subject to final approval, and separately placed on the public record, an agreement to a proposed consent order from Grey involving Grey's role in creating advertising for Hasbro, Inc.'s Colorblaster Design Toy.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the complaint, advertising created by Grey for Dannon Pure Indulgence frozen yogurt falsely represented that the frozen yogurt was low in fat, low in calories, and lower in fat than ice cream when certain flavors of the yogurt were not. The complaint further alleges that Grey knew or should have known that these claims were false and misleading. A separate consent order with The Dannon Company, Inc. resolving allegations about the same advertisement was issued by the Commission on March 18, 1996. Docket No. C-3643.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Grey from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits Grey from misrepresenting the existence or amount of fat, saturated fat, cholesterol or calories in any frozen yogurt, frozen sorbet or ice cream product (excluding all other food or confection products in which ice cream is an ingredient comprising less than fifty percent of the total weight of the involved product). Part I also requires that any representation covered by that Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration ("FDA") must comply with the qualifying amount set forth in that regulation.

Part II of the proposed order provides that representations that would be specifically permitted in food labeling, under regulations issued by the FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

The proposed order also requires Grey to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to its operating divisions and certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the

order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing in federal court, by either the United States or the FTC, of a complaint against Grey alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.